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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,423	03/11/2005	Tatsuo Sudoh	0033-0989PUS1	5739
2292 7590 09/02/2010 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SALTARELLI, DOMINIC D				
ART UNIT 2421		PAPER NUMBER		
NOTIFICATION DATE 09/02/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/527,423

Applicant(s)

SUDOH, TATSUO

Examiner

DOMINIC D. SALTARELLI

Art Unit

2421

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 18, 2010 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-15 and 16-28 have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel et al. (6,637,029, of record) in view of Bedard (5,801,747).

Regarding claims 1-13, and 20, Maissel discloses a data output apparatus (fig. 1), comprising:

a preference score vote receiving unit receiving a vote of a preference score of output data representing a degree of preference (how much time was spent watching a particular program indicates the degree of preference, col. 12, lines 16-34);

a preference score counting unit counting the vote of preference score received by said preference score vote receiving unit (col. 12, lines 35-45, which could also be located at a headend for receiving preference information from multiple users simultaneously, col. 18, lines 58-67, which resets periodically, col. 12, lines 23-31);

an output unit outputting data (col. 10, lines 1-11, including new arrival information, such as alerts, col. 14, line 17 and col. 19, lines 31-49); and

a switch destination data determining unit determining a switch destination of data being output by said output unit based on a result of counting by said preference score counting unit (col. 13, lines 35-47), wherein

said switch destination is determined such that data of high preference score has a high probability, based on the result of counting of the preference score by said preference score counting unit (col. 13, lines 35-47, where this is a lower limit set for voting score to distinguish channel surfing from actual viewing, col. 17, lines 17-32) or that data of low preference score has a high probability, based on the result of counting of the preference score by said preference score counting unit (when the profile is used an anti-profile, col. 15, lines 5-10, inverting the threshold determination above).

Maissel fails to disclose outputting data based on receipt of a data change request from a user.

In an analogous art, Bedard teaches outputting data that is selectively determined based on user preferences upon receipt of a data change request from a user (col. 3, lines 26-56 and col. 7, lines 39-64), providing the benefit of showcasing what is on a user's favorite channels to assist in finding programming they may be interested in.

It would have been obvious at the time to a person of ordinary skill in the art to modify the apparatus of Maissel to include outputting data based on receipt of a data change request from a user, as taught by Bedard, for the benefit of showcasing what is on a user's favorite channels to assist in finding programming they may be interested in by automatically cycling through channels that the user is determined to be most interested in.

Regarding claims 26 and 27, Maissel and Bedard disclose the data output apparatus of claim 1, wherein, upon receipt of a media data switch request (in this case, a channel change),

the switch destination data determining unit determines the switch destination of data based on the result of counting by the preference score counting unit and the output unit outputs data based on the determined switch destination of data (such as when the channel is a user's customized virtual

channel which displays the user's preferred programs, Maissel, col. 14, lines 10-16); and

further comprising: a storing unit storing the switch destination determined by the switch destination media data determining unit, wherein upon receipt of the media data switch request, the output unit outputs data by an incremental change in a channel based on the stored switch destination (the virtual channel information is stored, and dynamically changes channels to receive the preferred programs for output when a user tunes to said channel, Maissel, col. 5, lines 35-38).

Regarding claim 28, Maissel and Bedard disclose the data output apparatus of claim 1, wherein the vote of preference score is received as a result of a user's voting operation (Maissel, col. 12, lines 45-59).

5. Claims 15, 16, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel and Bedard as applied to claim 1 above, and further in view of Blahut et al. (5,446,490, of record) [Blahut]

Regarding claims 15, 16, and 21-25, Maissel and Bedard disclose the data output apparatus of claim 1, but fails to disclose said output unit successively performs a process of switching and outputting the data that is being output at present and data as said switch destination different from said data that is being output at.

Blahut teaches that "virtual channels" are well known in the art, said channels being comprised of content from multiple sources, where a receiver will automatically switch between different sources for content based on viewer preferences, creating a customized channel calculated to be of high interest to a viewer (col. 5 line 67 - col. 6 line 29).

It would have been obvious at the time to a person of ordinary skill in the art to modify the apparatus of Maissel and Bedard to include a "virtual channel" as taught by Blahut, wherein said output unit successively performs a process of switching and outputting the data that is being output at present and data as said switch destination different from said data that is being output at present, creating a customized channel of content that is calculated to be of high interest of a viewer.

6. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel, Bedard, and Blahut as applied to claim 16, and further in view of Itakura et al. (6,157,946, of record) [Itakura].

Regarding claims 17-19, Maissel, Bedard, and Blahut disclose the apparatus of claim 16, but fail to disclose the data output time determining unit (which would previously only control switching at the end of each data item) determines said time of data output by said output unit based on the result of counting preference score by said preference score counting unit.

In an analogous art, Itakura discloses a data output apparatus wherein user interest is determined based upon user interaction, and items of greater interest are displayed for longer periods of time (col. 3, lines 1-6).

It would have been obvious at the time to a person of ordinary skill in the art to display types of content longer if the user is determined to be interested in said type of content, as taught by Itakura, since this would further improve the targeting of content taught by Maissel, Bedard, and Blahut, as user interaction which indicates interest allows the apparatus to provide more immediate benefit to quickly respond by extending the time spent outputting data of a certain type in which the user has expressed interest. The opposite would apply in the case of using Maissel's 'anti-profile'.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIC D. SALTARELLI whose telephone number is (571)272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dominic D Saltarelli/
Primary Examiner, Art Unit 2421